

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



June 29, 1990

ALL COUNTY LETTER NO. 90-58

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: COLLECTION METHODS FOR CLAIMS WITH AGENCY-CAUSED ERRORS

REFERENCES: STATE REGULATIONS: MPP 44-350, MPP 44-351 and MPP 44-352.4; MPP 63-801.711, and MPP 63-801.732

FEDERAL REGULATIONS: 45 CFR 233.20(a)(13)(i)(A)(1), and 7 CFR 273.18 (d)(1)(i)

The purpose of this letter is to clarify and emphasize collection methods which are available when agency-caused overpayments and overissuances occur and must be recovered by Counties. These methods of collection will assist in strengthening and increasing the Counties' recovery activities from current and former recipients with administrative error (AE) caused overpayment balances.

This letter also restates, in part, regulations set forth in the Manual of Policies and Procedures (MPP) for both the Aid to Families with Dependent Children (AFDC) and Food Stamp Programs. We recommend that the regulations and references be reviewed for the complete citation and exceptions.

Background

The 1981 and 1982 Omnibus Acts allowed States to retain a share of the Food Stamp overissuances collected and authorized States to use collection techniques available under State law in order to improve collections in the Food Stamp Program. The Food Security Act of 1985 strengthened the latter provision by requiring States to use all cost-effective means. The Congress also emphasized the need for aggressive collection actions in the AFDC program by enacting legislation requiring States to take appropriate action under State law against the income or resources of former participants to recover overpayments.

The 1981 Omnibus Act permits States to use various methods to collect overpayment claims against former AFDC recipients. States were provided the same authority for Food Stamp collections through the 1982 amendments to the Food Stamp Act. Such collection methods include using private collection agencies, obtaining judgments in courts of appropriate jurisdiction, and offsetting State tax refunds.

### AFDC Administrative Errors (AEs)

Pursuant to MPP 44-350.16, the County shall take all reasonable steps necessary to promptly correct and collect any overpayments that are known to the County including recovery of overpayments due to AEs. Some methods of AFDC recovery may be used concurrently when possible. However, those methods that will result in the maximum recovery should be used (MPP 44-352.4).

#### o Grant Adjustment

The overpayment is adjusted from the current aid payment. For AFDC overpayments, the County determines the Assistance Unit's total available resources in the payment month. MPP 44-352.411(a)(1) states, "For overpayments caused by agency error, determine the sum of the Assistance Unit's total grant amount for the payment month before overpayment adjustments, the Assistance Unit's gross earned income less any dependent care disregards as specified in Section 44-113.215 and less the standard work expense disregard as specified in Section 44-113.214, other net nonexempt income, and the Assistance Unit's liquid resources."

To determine the required need allowance, the County multiplies the Maximum Aid Payment plus any special needs for the Assistance Unit by .95 and rounds the amount to the nearest dollar [MPP 44-352.411(b)(1)].

If the amount determined in the first paragraph above is larger than the amount in the second paragraph, the County may grant adjust the overpayment. The amount determined by subtracting the second amount from the first amount is the amount to be recovered by grant adjustment for that month unless the grant amount before adjustment or the overpayment balance is less [MPP 44-352.411(c)(1)].

The overpayment is to be adjusted from the current aid payment. If the current aid payment is not enough to recover the entire overpayment, then the remaining amount of the overpayment is applied to succeeding month(s) and the grant adjustment process is repeated [MPP 44-352.411(d)(1)].

#### o Balancing

When an Assistance Unit has both an overpayment and an underpayment, the County shall offset one against the other (MPP 44-351.3).

o Demand for Repayment

Using the appropriate Notice of Action form, the County shall demand repayment of any amount not recovered by grant adjustment, or otherwise repaid, except that no demand shall be made for nonwillful overpayment due to factors that occurred prior to April 2, 1982 (MPP 44-352.43).

o State Income Tax Intercept

The State Income Tax Refund Intercept Program may be used to collect on cases which are not eligible for other means of collection, which are not eligible for grant adjustments (i.e., discontinued cases), the debtor is not making or stopped making regular restitution payments, the debtor has not requested a State hearing, and the overpayment is more than \$35. Other eligible accounts include non court-ordered restitution of AFDC overpayments for which the household has failed to respond to written demand letters.

o Civil Judgment

The County may sue the debtor in a court of appropriate jurisdiction to obtain a judgment in order to enforce collection, if the recipient or an individual no longer receiving aid refuses to repay the amount demanded (MPP 44-352.441). Once a judgment is entered it is enforceable for ten years after the date of entry of the judgment. A judgment can be renewed prior to the expiration for an additional ten years (Code of Civil Procedures, Section 85, 86 and 116.2). Pursuant to MPP 44-352.2, the County is not allowed to pursue civil judgment from individuals no longer receiving aid when the overpayment is a non-fraud claim and the total amount of the overpayment is less than \$35.

Food Stamp Administrative Error Claim Recovery

Pursuant to MPP 63-801.411, Counties shall initiate collection action against the household for all AE claims unless the total amount of the claim is less than \$35 and the claim cannot be recovered by reducing the household's allotment or the County has documentation which shows that the household cannot be located.

o Allotment Reduction

According to MPP 63-801.431(b), the household shall be informed of the availability of allotment reduction as a method of repayment. Counties shall collect payments for an AE claim from a household currently participating in the Food Stamp Program by reducing the household's Food Stamp allotments if the household prefers to use this

method of repayment (MPP 63-801.732). The amount of Food Stamps to be recovered each month from a household choosing to use this method shall be negotiated with the household. Choice of this option is entirely up to the household and no household shall have its allotment reduced by an amount with which it does not agree for payment of an AE claim [MPP 63-801.737(b)]. In other words, the County cannot use allotment reduction to collect Food Stamp AEs unless the household has agreed to this method [MPP 63-801.732 and .737(b)].

The household must be provided with the State required forms (DFA 377.7B Food Stamp Repayment Notice, DFA 377.7B1 and DFA 377.7C Food Stamp Repayment Agreement [MPP 63-801.431]). To maximize collections, notices need to be sent to the household as soon as the overissuance is identified because recipients, in many cases, leave the program before the claims are fully paid and do not repay after leaving the program and/or are difficult to locate.

o Promissory Notes

The County may request that a client voluntarily sign a promissory note or an agreement in all cases. The note or agreement must be by consent which is free, mutual, and understood by the involved parties. The use of a promissory note or other written agreement is to "secure the debt/overpayment/overissuance". This means to secure an admittance by the debtor that the debt is owed and undisputed. If a client chooses not to sign a promissory note, the County may use other appropriate collection methods.

The Statement of Ability to Pay and Promissory Note (SAAP) may also be used by counties (copy attached). The SAAP contains the essential elements of a contract: 1) parties capable of contracting; 2) their consent; 3) a lawful object; and, 4) a sufficient cause or consideration (California Civil Code, Section 1550). The SAAP may be used to secure court ordered fines as well as non-court ordered debts (welfare fraud cases as well as AE overpayments). The SAAP is versatile enough to be used for payment plans on virtually any kind of debt including renegotiated payment terms on debts that have been previously secured. The SAAP contains provisions that allow you to charge the client interest, collection costs,

attorney's fee, etc. The terms of the agreement and payment-in-full should be included with a reevaluation of the client's financial condition in 12 months or less. When the client returns for reevaluation, payments should be adjusted as appropriate.

We encourage the use of the promissory note in order to secure the debt. Each County should check with its Legal Counsel to ensure that clients are advised of their rights before signing a promissory note.

o Lump Sum

If the household or the sponsor chooses to pay the claim at one time, the County shall collect a lump sum payment. The household shall not be required to liquidate all of its resources to make this one lump sum repayment (MPP 63-801.711).

o Installments

The CWD shall negotiate a payment schedule with the household or the sponsor if the household or sponsor chooses this method for a full or partial repayment of the claim (MPP 63-801.721). Payments shall be accepted by the County in regular installments. If the household fails to maintain the agreed upon installment repayment schedule, it may be renegotiated (MPP 63-801.722).

Other Collection Methods

According to MPP 63-801.443, the County may also pursue other collection actions, as appropriate, to obtain restitution of a claim against any household or sponsor which failed to respond to a written demand letter for repayment of an AE claim. This means that, if the household is currently participating in the Food Stamp Program, the County may pursue other collection methods. The County does not have to wait to pursue collection by other means if the household is no longer participating in the Food Stamp Program.

These other methods include:

o State Income Tax Intercept

The State Income Tax Refund Intercept Program may be used to collect on cases which are not eligible for allotment reduction, the debtor is not making regular restitution

payments, the debtor has not requested a State hearing, and the overissuance is more than \$35. Ongoing Food Stamp cases in which a household declines to voluntarily repay, may not be submitted for State Income Tax Intercept. Other eligible accounts include non court-ordered restitution of all Food Stamp claims which have not been terminated and for which the household has failed to respond to a written demand letter(s).

This program is very effective and each year the Department of Social Services sends an All County Letter to each County instructing them on the procedures required to use this program.

o Lawsuit/Civil Judgment

For those Counties in which a determination is made that it is cost-effective to pursue a claim, lawsuits/civil judgments may be used to collect the overissuance. When an account becomes delinquent and the debtor refuses to pay, the County may sue the debtor in a court of appropriate jurisdiction to obtain a judgment in order to enforce collection. Once a judgment is entered it is enforceable for ten years after the date of entry of the judgment. A judgment can be renewed prior to the expiration for an additional ten years (Code of Civil Procedures, Section 85, 86 and 116.2).

o Attachment or Garnishment/Writs of Execution

For those Counties in which a determination is made that it is cost-effective to pursue a claim, attachments, garnishments, or writs of execution may be used to collect the overissuance. A writ of execution is a method used to attach the assets of a client who owes you money for which you have obtained a judgment. Writs can be issued against wages, bank accounts, personal property, stocks, etc. (Code of Civil Procedures, Section 117.7).

The success and efficiency of collection actions can be enhanced if they are started at the earliest possible time. If you have any questions, please contact the Overpayment Recovery Bureau at (916) 322-5387 or ATSS 492-5387.



ROBERT A. HOREL  
Deputy Director

Attachment

cc: CWDA

## STATEMENT OF ABILITY TO PAY AND PROMISSORY NOTE

CASE NO.: \_\_\_\_\_

CALIFORNIA

I, the undersigned, have the present ability and agree to pay the Office of Revenue Reimbursements, County of \_\_\_\_\_, the sum of \$ \_\_\_\_\_, with interest from the date of any default on the unpaid principal at the rate of 10.0 percent per year, principal and interest payable in installments of:

\$ \_\_\_\_\_ or more by \_\_\_\_\_;  
 \$ \_\_\_\_\_ or more by \_\_\_\_\_;  
 \$ \_\_\_\_\_ or more per month starting \_\_\_\_\_  
 and continuing until:

☐ paid in full.

☐ \_\_\_\_\_, when the remaining balance is due unless I renegotiate new payment arrangements on or before that date.

This amount is due because of \_\_\_\_\_.  
 Each payment shall be credited first on interest when due and the remainder on principal. I understand that this payment arrangement is based, in part, on my ability to pay as determined today, and that changes in my ability to pay will allow the County of \_\_\_\_\_ to declare the remaining balance due and payable or otherwise revise the required payment.

Acceptance of this note, and payments made thereunder, is not intended to be either an express or implied waiver or release of any and all other remedies and causes of action the County of \_\_\_\_\_ may have available to it, including but not limited to, breach of contract, common counts, and, where applicable, fraud (including exemplary and punitive damages).

I understand that so long as payments are made pursuant to the terms of this note or any executed written amendments thereto, the County will not pursue civil litigation to obtain a judgment for this debt and/or enforce a judgment on this debt. In consideration thereof, I agree to waive any and all applicable statutes limiting the time in which the County may file a civil action for breach of contract, common counts and fraud. I further agree to pay reasonable collection costs and/or attorney's fees if I fail to make the required payments and the County of \_\_\_\_\_ brings a lawsuit against me, plus all court costs and where applicable, exemplary damages.

\_\_\_\_\_  
 (Initial) All/A portion of my balance is for court-ordered fines and/or restitutions. I have been advised that my failure to make the required payments may also result in a writ of execution against my wages or other assets, seizure of my California State Income Tax Refund or a warrant being issued for my arrest.

\_\_\_\_\_  
 (Initial) I have been instructed and agree to report back to the Office of Revenue Reimbursements within seven (7) days of the due date of any required payment that I am unable to pay to notify the Office of Revenue Reimbursements of any change in my ability to pay and if necessary, renegotiate my payment arrangements. If I fail to pay as agreed and fail to renegotiate my payment arrangement(s), the entire balance will be declared due.

Signature: \_\_\_\_\_

Witnessed by: \_\_\_\_\_

Date: \_\_\_\_\_